

U.S. v. Southern Coal Corporation, Civil Action No. 7:16-cv-00462-GEC

Exhibit 5

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA**

(ROANOKE DIVISION)

UNITED STATES OF AMERICA, ET AL.,

Plaintiffs,

V.

SOUTHERN COAL CORPORATION, ET AL.,

Defendants.

Civil Action No. 7:16-cv-00462-GEC

DECLARATION OF DANIEL LAWRENCE

I, Daniel Lawrence, declare the following to be true and correct to the best of my knowledge
under the penalty of perjury:

1. My name is Daniel Lawrence, and I am an employee of the Tennessee Department of Environment and Conservation (“TDEC”), in Knoxville, Tennessee. I have been employed by TDEC since October 1, 2014.
2. I obtained my Bachelor of Science in Environmental Science Engineering & Biology from the University of Tennessee in 2014.
3. I am currently the Program Coordinator, Division of Water Resources – Mining Section, Knoxville Environmental Field Office.
4. As the Program Coordinator, my duties include case development, inspecting facilities, drafting administrative and judicial enforcement documents and orders, calculating penalties,

and monitoring compliance with administrative and judicial enforcement orders covered by the *Tennessee Water Quality Act*, Tenn. Code Ann. § 69-3-101 *et seq.*

5. I submit this Declaration in support of the United States', the State of Alabama's, and the State of Tennessee's Motion to Compel Compliance with the Consent Decree ("CD").
6. Under my coordination, TDEC staff conducted inspections at Premium Coal Company Inc.'s Mine 20, Mine 5A, and Refuse Area #2 sites in Tennessee ("TN Sites") on the following dates: November 17 and 19, 2020 (Exhibit 5, Attachment A), December 9, 2020 (Exhibit 5, Attachment B), and January 11, 2021 (Exhibit 5, Attachment C) . True and correct copies of the TDEC Inspection Reports are attached.
7. As indicated in the TDEC Inspection Reports, the soil erosion stabilization work at the TN Sites demanded in the September 2, 2020 U.S. Demand was not completed within 30 days of the U.S. Demand. I and other TDEC staff subsequently continued to meet and discuss with Southern Coal Corporation's and Premium Coal Company, Inc.'s contractors about necessary soil erosion control and stabilization work at the TN Sites.
8. Due to the delay in completing the work within 30 days as required in the U.S. Demand, temporary measures were required to ensure stability of the TN Sites during the winter until a final determination of stability can be completed in the spring. Under my coordination, TDEC provided a stabilization punch list to Southern Coal Corporation and Premium Coal Company, Inc., on December 14, 2020. It was not until on or around January 11, 2021 that Southern Coal Corporation's and Premium Coal Company, Inc.'s contractors completed the site stabilization punch list items as discussed and directed by TDEC.
9. Additional soil erosion stabilization work at the TN Sites may be necessary in the spring once warmer weather conditions allow.

Executed this 10th day of March 2021, in Knoxville, Tennessee.

A handwritten signature in blue ink, appearing to read "D. Lawrence", is written above a horizontal line.

Daniel Lawrence

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Exhibit 5, Attachment A



STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION
KNOXVILLE ENVIRONMENTAL FIELD OFFICE
3711 MIDDLEBROOK PIKE
KNOXVILLE, TENNESSEE 37921-6538
PHONE (865) 594-6035 STATEWIDE 1-888-891-8332 FAX (865) 594-6105

Supplemental Inspection Information

DATE OF INSPECTION: 11/17/2020
COMPANY NAME: Premium Coal Company, Inc.
FACILITY NAME: Area #20
NPDES PERMIT NUMBER: TN0079570
TDEC INSPECTOR PRESENT: Chris Pracheil

NARRATIVE STATEMENT:

Premium Coal Company, Inc –Area #20 is a 251.8 acre partial reclaimed surface mine site. The purpose of the supplemental inspection was to determine if the hydroseeding of the recently reclaimed areas had germinated and become established. The reclaimed areas did appear to be adequately covered with grass seed and germination had occurred throughout the site. The reclamation areas with southern and western exposure appeared to have higher levels of germination and the seedlings were larger and covered more of the reclamation area than areas with northern and eastern exposures.

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Photo 1. View of recently hydroseeded reclamation area with a western exposure.

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Photo 2. Close-up of recently hydroseeded reclamation area with a western exposure.

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Photo 3. View recently hydroseeded reclamation area with a southwestern exposure.



Photo 4. View recently hydroseeded reclamation area with a western exposure. Note the erosion rills without any grass seedlings.

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Photo 5. View recently hydroseeded reclamation area with a northern exposure, the grey color is due to the hydroseed mixture.



Photo 6. Close-up of recently hydroseeded reclamation area with a northern exposure. Note the seedlings appear less dense and less developed than seedlings on western and southern slopes.

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Photo 7. View recently hydroseeded reclamation area with a northern exposure, the grey color is due to the hydroseed mixture.

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Photo 8. Close-up of recently hydroseeded reclamation area with a northern exposure.



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Supplemental Inspection Information

DATE OF INSPECTION: 11/17/2020
COMPANY NAME: Premium Coal Company, Inc.
FACILITY NAME: Refuse Area 2
NPDES PERMIT NUMBER: TN0063592
TDEC INSPECTOR PRESENT: Chris Pracheil

NARRATIVE STATEMENT:

Premium Coal Company, Inc –Refuse Area 2 is a 38 acre refuse area. Premium Coal Company, Inc. had recently attempted to remove invasive kudzu from the refuse area by using heavy equipment to scrape the kudzu off the refuse area slopes; resulting in large areas of unvegetated soil. The purpose of the supplemental inspection was to determine if the hydroseeding of the recently disturbed areas had germinated and become established. The disturbed areas did appear to be adequately covered with grass seed and germination had begun to occur, but the grass seedlings were not well established.

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Photo 1. View of recently hydroseeded disturbed area with small grass seedlings visible.

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Photo 2. View of recently hydroseeded disturbed area with small grass seedlings visible.



Photo 3. Close-up of recently hydroseeded disturbed area, note grass seedling are just beginning to emerge from the soil.

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Photo 4. Additional close-up of recently hydroseeded disturbed area with seedlings beginning to emerge.

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Photo 5. View of recently hydroseeded disturbed area with very little grass growth.

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Photo 6. Additional view of recently hydroseeded disturbed area with very little grass growth.



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Supplemental Inspection Information

The information contained within this document is supplemental to the inspection record(s) for this facility located online at the following web address:

http://tdec.tn.gov:8080/pls/enf_reports/f?p=9034:34051:::NO:34051:P34051_PERMIT_NUMBER:TN0069159

DATE OF INSPECTION: 11/19/2020

COMPANY NAME: Premium Coal Company, Inc.

FACILITY NAME: Mine 5A

NPDES PERMIT NUMBER: TN00TN0069159

TDEC INSPECTORS PRESENT: Logan Kennedy

NARRATIVE STATEMENT (SUPPLEMENTAL TO ONLINE INSPECTION RECORD):

Premium Coal Company, Inc – Mine 5A is a 64.5 acre site associated with an underground coal mine. The purpose of the supplemental inspection was to determine if the hydroseeding of the recently regraded areas had germinated and become established. No evidence of vegetation was evident at the relevant areas. Although hydroseeding has taken place, areas around the remaining highwall and around the treatment structure were still bare with no obvious signs of germination or established ground cover.

PHOTOS



Photo 1. North end of highwall with bare soil above, below, and alongside the highwall. (Area appears to have been hydroseeded, but no vegetation yet present.)

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Photo 2. Closer view of bare soil alongside North end of highwall. (Area appears to have been hydroseeded, but no vegetation yet present.)

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Photo 3. South end of highwall with bare soil visible above and below highwall. (Area appears to have been hydroseeded, but no vegetation yet present.)

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Photo 4. Ditch along haul road to treatment pond with no vegetation on ditch walls.

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Photo 5. Slope with bare soil and active erosion just to the east of the treatment structure.

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Photo 6. Established vegetation on path to bare slope in **Photo 5**.

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Photo 7. Bare area to Southwest of the treatment structure.

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Exhibit 5, Attachment B



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http://tdec.tn.gov:8080/pls/enf_reports/f?p=9034:34051:::NO:34051:P34051_PERMIT_NUMBER:79570

DATE OF INSPECTION: 12/9/2020

COMPANY NAME: Premium Coal Company, Inc.

FACILITY NAME: Area 20

NPDES PERMIT NUMBER: 79570

TDEC INSPECTORS PRESENT: Bonnie Craighead

NARRATIVE STATEMENT (SUPPLEMENTAL TO ONLINE INSPECTION RECORD):

This northermost unreclaimed portion of this strip mine was recently regraded and hydroseeded. Hydroseeding was unsuccessful with little to no grass establishment. Rill erosion is starting to form on the out slopes of the spoil pile. Additional measures are needed to stabilize the site. Storm water from this area drains to pond 5 for treatment before discharge.

PHOTOS



Photo 1. View of the northernmost portion of Area 20 looking northeast.



Photo 2. Evidence of iron staining from storm water drainage from the highwall and face-up area.

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Photo 3. Rill erosion is beginning to form on unstable out slopes of the spoil pile.

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Photo 4. View from the top of the spoil pile. Hydroseeding unsuccessful.



Photo 5. Typical groundcover. Very few grass seedlings observable.



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Supplemental Inspection Information

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http://tdec.tn.gov:8080/pls/enf_reports/f?p=9034:34051:::NO:34051:P34051_PERMIT_NUMBER:TN0063592

DATE OF INSPECTION: 12/9/2020

COMPANY NAME: Premium Coal Company, Inc.

FACILITY NAME: Refuse Area 2

NPDES PERMIT NUMBER: TN0063592

TDEC INSPECTORS PRESENT: Bonnie Craighead

NARRATIVE STATEMENT (SUPPLEMENTAL TO ONLINE INSPECTION RECORD):

This facility was recently cleared of kudzu and those areas hydroseeded. The hydroseeded areas have moderately established grass growth approximately 3" tall. These areas should be monitored to ensure full stand growth in the spring season. The top of the refuse area and any bare spots along the outslopes should be seeded or reseeded for stabilization.

PHOTOS



Photo 1. Photo taken of the refuse area along the west side of the haulroad, west of pond 002. This area was recently hydroseeded with some successful grass establishment. Growth is slow based on current weather conditions.



Photo 2. Photo taken of the refuse area outslope along the west side of the haulroad.



Photo 3. Photo taken of the refuse area outslope along the west side of the haulroad. In some areas of the refuse area older vegetation is well established.



Photo 4. View from the top of the refuse area looking north. The top of the refuse area has sparse vegetation.



Photo 5. Photo of hydroseeded grass establishment.



Photo 1. One of the three culverts at the haulroad's stream crossing is blocked and needs repair.



Photo 2. Pond 002. The water level in this pond was low and it was not discharging at the time of inspection.



Photo 3. Pond 001. This pond was not discharging at the time of inspection.



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http://tdec.tn.gov:8080/pls/enf_reports/f?p=9034:34051::NO:34051:P34051_PERMIT_NUMBER:TN0069159

DATE OF INSPECTION: 12/9/2020

COMPANY NAME: Premium Coal Company, Inc.

FACILITY NAME: Mine 5A

NPDES PERMIT NUMBER: TN0069159

TDEC INSPECTORS PRESENT: Daniel Lawrence

NARRATIVE STATEMENT (SUPPLEMENTAL TO ONLINE INSPECTION RECORD):

A complete inspection of the facility was conducted. This facility is not presently active and no equipment is on site. A highwall remains which has been partially backfilled. The bench, highwall, and other areas were recently hydroseeded. Evidence of hydroseeding (such as mulch) is present and grass seed is beginning to germinate in places. This grass is not yet well established, and the site is not presently completely stable. The germinated seed is approximately 1" tall and thinly dispersed. This is likely due to the timing of the seeding. Additional grass seed may be present at this facility but dormant until the next growing season. Unstable areas include the highwall area, bench, road to Pond 001, and a small area to the east of Pond 001. The unstable areas drain to Pond 001. This pond was discharging at the time of inspection. The discharge water was clear. The NPDES permit for this facility is presently expired and discharges are not authorized.

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PHOTOS



Photo 1. Entrance to mine site. Grass seed beginning to germinate on berm and “bench” area.

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Photo 2. Close-up of germinating grass seed at entrance to mine site.

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Photo 3. Remaining highwall and bench area. Bare dirt areas showed evidence of hydroseeding and limited germination of grass.



Photo 4. Remaining highwall and bench area. Bare dirt areas showed evidence of hydroseeding and limited germination of grass.



Photo 5. Close-up of germinated grass on bench area near toe of highwall. Germinated grass is approximately 1" tall.

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Photo 6. View of bench area from atop highwall.



Photo 7. Material placed above the highwall. This material was recently hydroseeded as well but showed limited germination.



Photo 8. Access road to Pond 001. This road showed signs of erosion. Some “water bars” had been installed along this road, but additional measures may be needed to prevent further erosion.

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Photo 9. Pond 001. This pond was discharging at the time of inspection. The discharge water was clear.



Photo 10. Outfall 001. This outfall was discharging at the time of inspection. The flow rate was a trickle. The discharged water was clear.

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Exhibit 5, Attachment C

STATE OF TENNESSEE

Office of the Attorney General



HERBERT H. SLATERY III
ATTORNEY GENERAL AND REPORTER

P.O. BOX 20207, NASHVILLE, TN 37202
TELEPHONE (615)741-3491
FACSIMILE (615)741-2009

January 6, 2021

Via Electronic Mail

Michael Carey, Esq.
Benjamin Bryant, Esq.
Carey, Scott, Douglas & Kessler, PLLC

E-mail: mwcarey@csdlawfirm.com
sbbryant@csdlawfirm.com

RE: *United States of America et al. v. Southern Coal Corporation, et al.*
Civil Action No. 7:16-cv-00462-GEC (W.D. Va.)

Dear Messrs. Carey and Bryant:

Attached is a punch list of work items prepared by the Tennessee Department of Environment and Conservation (TDEC), which must be completed as soon as possible to stabilize Premium Coal Mine 5A, Premium Coal Area 20, and Premium Coal Refuse Area 2 throughout the winter until permanent stabilization is complete in the spring. If your client has any questions about any of the items on the attached list or would like to meet onsite with TDEC personnel to discuss the punch list items, please let me know as soon as possible, and I will arrange for this meeting to take place.

The work described in the attached punch list is required pursuant to the demand letter sent to you by the U.S. Department of Justice on September 2, 2020. This letter required the above referenced three sites to be stabilized and to cease having unpermitted discharges in violation of the federal consent decree. All items in the enclosed punch list must be completed by no later than **January 31, 2021**. Therefore, if your clients would like an onsite meeting to discuss any of the items in the enclosed punch list, it is imperative that you contact me as soon as possible to arrange for such a meeting. Thank you for your attention to this matter.

Sincerely,

/s/ Wilson S. Buntin

WILSON S. BUNTIN

Senior Assistant Attorney General

Tel.: (615) 253-5118

E-mail: wilson.buntin@ag.tn.gov

Enclosure: Draft Punch List for Site Stability Southern Coal Expired Facilities

cc:

by electronic mail

P. Casey Patrick.Casey@usdoj.gov

S. Durman Stephanie.Durman@tn.gov

D. Lawrence Daniel.Lawrence@tn.gov

B. Epperson Bryan.Epperson@tn.gov

Draft Punch List for Site Stability
Southern Coal Expired Facilities
December 2020

Premium Coal Mine 5A (TN0069159)

- Install a vehicle barrier such as large rocks at the entrance to the facility.
- Install two rock check dams within the drainage channel between the highwall area and the culvert under the haul road.
- Install rock check dams at the outlet end of each water bar on the road leading to pond 01.
- Install straw waddles at the base of the bare area to the southwest of pond 01.
- Maintain pond 01 and the forebay as a storm water sump. No work is currently needed. Maintenance includes removal of excess sediment, beaver dams, or vegetation as appropriate.

Premium Coal Area 20 (TN0079579)

- Install a vehicle barrier such as large rocks on haul road near northernmost portion of the facility.
- Access road to pond 005 experiences severe erosion from stormwater. Install check dams or water bars along the access road. Regrade as necessary.
- Deepen or reslope temporary ditches constructed at face-up area to convey storm water from the stockpile area to the ditch line to 005 faster. Reduce standing water on the face up area as much as possible.
- Maintain all constructed ponds as storm water sumps. No work is currently needed. Maintenance includes removal of excess sediment, beaver dams, or vegetation as appropriate.





Premium Coal Refuse Area 2 (TN0063592)

- Clear the blockage in the culvert at the stream crossing.
- Maintain pond 001 and 002 as storm water sumps. No work is currently needed. Maintenance includes removal of excess sediment, beaver dams, or vegetation as appropriate.

Timeline for Completion:

All listed steps must be completed by **January 31, 2021**.





Premium Coal Mine 5A
(TN0069159)

-  Straw Waddles
-  Rock Check Dams
-  Vehicle Barrier
(Large Rocks or Otherwise)
-  Stormwater Sump
(Maintain as Needed)





Premium Coal Area 20
(TN0079579)



-  Vehicle Barrier
(Large Rocks or Otherwise)
-  Stormwater Sump
(Maintain as Needed)
-  Rock Check Dams or
water bars
-  Drainage ditch to be
graded

Premium Coal Refuse Area 2
(TN0063592)

-  Stormwater Sump
(Maintain as Needed)
-  Clear blocked culvert at
stream crossing





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Confirmation of Punch List Item Completion at Premium Coal Facilities

DOCUMENT DATE: 1/15/2021

DATE OF INSPECTION: 1/11/2021

COMPANY NAME: Premium Coal Company, Inc.

FACILITY NAME: Refuse Area 2, Mine 20, Mine 5A

NPDES PERMIT NUMBER: TN0063592, TN0079579, TN0069159

TDEC INSPECTORS PRESENT: Bonnie Craighead, Daniel Lawrence

NARRATIVE STATEMENT:

On January 11, 2021, TDEC staff Bonnie Craighead and Daniel Lawrence met with Premium Coal staff member Travis Duncan to evaluate the completion of "punch list" items at Premium Coal Refuse Area 2. TDEC staff confirmed that all punch list items were complete for this facility. Division staff were unable to access Mine 20 or 5A due to snow.

On January 14, 2021, Travis Duncan provided information and photographic evidence of completion of punch list items at Mines 20 and 5A. This information is provided below.

Based upon the partial inspection and subsequent information furnished by Premium Coal, TDEC staff have determined that all punch list items have been completed.

Confirmation of Punch List Item Completion at Premium Coal Facilities

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PHOTOS OF PREMIUM COAL REFUSE AREA 2

Photos taken by TDEC staff on 1/11/2021



Photo 1. Large rocks placed to block entrance road.



Photo 2. Large rocks placed to block secondary road.

Confirmation of Punch List Item Completion at Premium Coal Facilities

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Photo 3. Unblocked Culvert (rightmost culvert).

PHOTOS AND INFORMATION ON PREMIUM COAL MINE 20

Provided by Travis Duncan on 11/14/2021

Description provided via text message:

Mine 20 punch list items, as you can see in the pics Mine 20 still has quite a bit of snow, so hopefully these pics will work for now. The access road to pond 005 has water bars, (note: this 005 access road gets used to access a power line and gas wells also) and some of the water from the flat area above that was draining down to the 005 access road from the top, has been directed to the sump that was put in a while back for the stockpile area, and the water drainage and puddles in the pit area have been fixed for better drainage to drain to the pond 005 ditch, and the road has been blocked to try and prevent traffic from getting on the recently disturbed pit area.

Confirmation of Punch List Item Completion at Premium Coal Facilities

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PHOTOS AND INFORMATION ON PREMIUM COAL MINE 5A

Provided by Travis Duncan on 11/14/2021

Description provided via text message:

Here are the photos of Mine 5A of the items on the punch list completed. Water bars on the hill going to the pond, mine site entrance blocked with boulders, rock checks put in the ditch line and drainage area from the face up.



Confirmation of Punch List Item Completion at Premium Coal Facilities

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